

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:10-CR-93-BR-1
No. 7:12-CV-209-BR

CHARLETTE DUFRAJ JOHNSON,)
Petitioner,)
v.)
UNITED STATES OF AMERICA,)
Respondent.)

ORDER

This matter is before the court for initial review of a 28 U.S.C. § 2255 motion pursuant to Rule 4 of the Rules Governing Section 2255 Proceedings. Under this Rule, “[i]f it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion” R. Gov. § 2255 Pro. 4(b). Petitioner is challenging both her conviction and sentence. However, because petitioner’s sentence has been vacated and the court has not yet re-sentenced petitioner, the motion is premature and therefore DISMISSED WITHOUT PREJUDICE. The court finds that petitioner has not made “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings, a certificate of appealability is DENIED.

This 24 July 2012.



W. Earl Britt

Senior U.S. District Judge